HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 317 (M/S) of 2003
Ashwarya Lal

Vs

Satya Prasad

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 27.9.2004

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 317 (M/S) of 2003

Ashwarya Lal ……. Petitioner

Versus

Satya Prasad ……. Respondent.

……

Hon. Rajesh Tandon J.

By the present writ petition, the petitioner has prayed for quashing of the order dated 23.12.2002 and decree dated 24.12. 2002 passed by the Prescribed Authority as well as the order passed by the appellate Authority dated 25.3.2003 and decree dated 02.04.2003 contained in Annexure 3 to 6 of the writ petition.

Factual Background of the case.

Briefly stated the application was filed under section 21 of the U.P.Act No. 13 of 1972 stating therein that the landlord respondent is the owner of the property situate at Rudraprayag near Bus Station on Badrinath and Rishikesh Road. The shops have been shown from the letters a, b, c, d and both the shops are adjoining to each other. The shop in dispute was let out by the father of the landlord to Hansraj, the father of Sri Ashcharya Lal at the rate of Rs. 100/- per month. The shops situate on the first floor whereas the houses are situate below the shops The rooms, which are below the shops are being used for residential purposes of the landlord.

The petitioner has denied the averments made in the application and in para 6 of the written statement it has been stated that the son of the landlord has got a licence for running the grain dealer business and the same in being done from his house itself. He has stated that the second son Naresh Prasad has got a shop at main Bazaar in the name of 'Nautial Pan Bhandar' and two other sons are students.

Both the parties have filed their affidavits. On behalf of the landlord paper no. 3 Ka/3 (affidavit) and paper no.21 Ka- the affidavit of Sachchidanand and the documents were filed viz. paper no. 11 Ga. (certificate of the Executive Officer Nagar Panchayat, Rudraprayag), 12 Ga. (report of the Patwari), 13 Ka (power of attorney), 19/2, (copy of F.D.R.), 19/3 copy of S.B. A/c No. 01190007279, etc.

The Prescribed Authority allowed the application of the landlord under section 21 of the Act on 23.12.2002. Against which, tenant has filed appeal before the District Judge, who dismissed the same on 25.3.2003.

Bona fide need of the Landlord

In paragraph 5 of the application the landlord has stated that the shops were constructed 75 years ago and the same is in dilapidated condition and since the landlord himself is residing below the shops there remains a tension in the mind of the landlord that it can fall at any moment. It reads as under:

> "कि यह दुकान वादी के पिता स0 मघवानंद द्वारा 75 वर्ष पूर्व बनाई गई थी।दुकान मिटटी और पत्थर की बनाई गई थी। और वर्तमान में दुकान कि स्थिति अत्यंत जीर्णशीर्ण हो चुकी है। और दुकान, मकान किसी भी समय टूट कर गिर सकती है। दुकान/मकान की दीवार पर कई जगह दरार पडी है और दुकान का नये सिरे से बनाये जाना अत्यंत आवश्यक है। यदि दुकान नये सिरे से बनाई जायें तो वह कभी भी गिर सकती है और वादी को परिवार भी दुकान के नीचे रहता है। जिससे जान व माल का खतरा बना हुआ है। "

In para 6 of the application, it has been stated that the landlord has got four sons and none of them are employed and the shop is required for his elder son and the shop will be constructed after demolition after the tenant vacates it. It reads as under:

> "कि वादी के चार पुत्र है और वादी का अपना स्वयं कोई व्यवसाय या नौकरी नही है। उसका सबसे बडा लडका 26 वर्ष का है, और पडा लिखा है, लेकिन उसका कोई रोजगार नही है बिना किसी रोजगार के वह बडा परेशान है, वादी को अपने परिवार की आय के लिये अपने बडे लडके

को कोई व्यवसाय व दुकान करने के लिये एंवम दाबाा, दुकान को नये सिरे से बनने के उपरांत स्वंय की आवश्यकता (*bona fide* need) है ताकि वह दुकान पर कुछ कमा सके और परिवार की रोजी रोटी की व्यवस्था हो सकें। ”

On behalf of the petitioner, affidavit of Sachhidanand was filed. During the pendency of the case, the landlord has filed the affidavit showing the requirement of two brothers who were studying at the time of filing of the application and also the fact that with regard to the dilapidated condition of the building due to landslide. Paragraph 8, 9 and 12 of the affidavit are quoted below:

“कि चॅूकि शपथकर्ता का उक्त मकान लगभग 35 वर्ष पुराना बना हुआ है और अब जीर्वशीर्ण हालत में है। जिसको नये सिरे से बनाया जाना अत्यंत आवश्यक है । इसके अलावा वर्ष 1991–92 में आये विनाशकारी भूकम्प के कारण व पहाडी धरातल पर मकान निर्मित होने के कारण भी उक्त मकान अत्यंत जीर्णशीर्ण हो चुका है। जिसकी नये सिरे से नव–निर्मित कराया जाना आवाश्यक है। विपक्षी से प्रश्नगत दुकान को खालीकराया जाना अत्यंत आवश्यक है ताकि जीर्णशीर्ण मकान का पुनःनिमार्ण कराया जायें तथा शपथकर्ता व उसके परिवार के जानमाल व रहने के स्थान को सुरक्षित बनाया जा सके।

कि शपथकर्ता के चार पुत्र है । शपथकर्ता का स्वयं का अपना कोई व्यवसाय नही है। और न ही वह कोई नौकरी करता है। वह साधन सम्पन्न व्यक्ति नही है। उसका बडा लडका भी पढा लिखा है उसके लिये कोई रोजगार नही है। दूसरा लडका भी बेरोजगार है। इसके अतिरिक्त उसके दो पुत्र है जो कि वर्तमान समय में बेरोजगार हो कर परेशान है। शपथकर्ता स्वयं अपनी अवस्था तथा दुकान हाने के बावजूद परेशान है क्योकि शपथकर्ता के पुत्र बेरोजगार है। शपथकर्ता द्वारावाद वर्ष 1999 में संस्थित किया गया था। उस समय उसके दो पुत्र हाईस्कूल इंटर में पढते थे जो कि अब बेरोजगार है इस प्रकार शपथकर्ता के चारों पुत्र बेरोजगार है शपथकर्ता को प्रश्नगत दुकान की सदभावी आवश्यकता है ताकि वह अपने जीते जी अपने पुत्रों को खाता–कमाता छोड सकें ।

कि शपथकर्ता उक्त मकान निर्माण हेतु प्रयासरत है एवं एफ0 डी0 व करन्ट–एकाउन्ट में से लोन लेकर मकान निमार्ण चाहता है एवं अपने पुत्रोकि रोजगार पर सुव्यवस्थित देखना चाहता है। विपक्षी/शपथकर्ता की साख बावत मे अन्यत्र भी दुकान प्राप्त कर सकता था । तुलनात्मक दृष्टि से शपथकर्ता को उक्तदुकान की अत्यधिक आवश्यकता है।”

I have perused the record and the affidavit filed by the parties. The landlord has clearly stated that four children are completely unemployed.

Prescribed Authority after taking into consideration the requirement of the landlord has allowed the application of the landlord.

During the pendency of the appeal the Appellate Court itself has inspected the place and the report is quoted below:

> "आश्चर्य लाल्र के पास जो दुकान है । उस पर टिनशेड लगा हुआ है। गत्ता जगह –जगह टूटा है। कार्ड बोर्ड के आगे टिनशेड लगा हुआ है। दुकान में जनरल स्टोर का सामान है। दुकान की उत्तर दिशा में लकडी के तख्तों का पार्टीशन लगा हुआ है। एंवम पश्चिम दिशा में लकडी के तख्तों में पार्टीशन लगा हुआ है एवं पश्चिम दिशा में दिवाल के ऊपर का हिस्सा टूटा हुआ है । टिन शेड लगा हुआ है।दुकान के नीचे स्टोर है। दुकान की ऊपर जाने के लिये सीढी नहीं है। अंदर गोदाम है दुकान के अन्दर की स्थिति ,दुकान के ऊपर टिन शेड लगा हुआ है और दुकान के ऊपर तख्ते लगे हुये है। दक्षिण वाली दिशा में भी टूटा फूट है । अन्दर गोदाम के नीचे मकान मालिक ने अपना रहना बताया। जिसके जाने का रास्ता बगल से है। पहले दोनों दुकाने एक ही थी बिजली का मीटर व कनेक्शन जहां लगा हुआ है। वहां पर भी दीवाल टूटी फूटी हैं इस रिपोर्ट से स्पष्ट होता है। कि दुकानों के नीचे जो गोदाम हैं उसमें नीचे कमरा है उसमें मकान मालिक रहता है। पश्चिम वाल दीवाल टूटी हुई है पूर्व वाली दीवाल टूटी हुई है। आश्चर्य लाल के दुकान गोदाम की नीचे कमरा है । जिस रमेंश चन्द्र की दुंकान के नीचे भी एक कमरा है। जिसकी स्थिति संतोषजनक नही हैं दोनो कमरों की मरम्मत की आवश्यकता है ।इसके अलावा मकान मालिक के पास एक कमरा है। जिसमें उसकी माता रहती है । एक कमरा गेस्ट के लिये है। जो कि नया है। गोदाम के नीचे वाली दुकानों के बाहर दीवाले भी टूटी फूटी हुई है। राशन की दुकान मकान मालिक के पास है। जिसमें सच्चिदानंद दुकान करता है। मकान मालिक अपनी किरायेदारी वाली दुकानें के रास्ता बनाना चाहता है।
>
> उपरोक्त रिपोर्ट से स्पष्ट होता है कि जिस कमरे में मकान मालिक रहता है। और जो दुकानों के नीचें है उसकी स्थिति जीर्णशीर्ण है। दीवालों की स्थिति भी संतोषजनक नही हैं उसको भी गिराकर निमार्ण कराना आवश्यक है। धारा 21 (1) (क) उ0प्र0 शहरी भवन किरायें पर देनें, किरायें तथा बेदखली विनिमय अधिनियम 1972, के अन्तर्गत प्रार्थी को यह अधिकार है कि वह अपनी दुकानों को जीर्णशीर्ण होने पर उसको गिराकर अपने परिवार के सदस्यों के लिये उनकी अवश्यकतानुसार खाली करा सकता है।"

From the inspector report, it is evident that the landlord has no place to accommodate his son in the independent business and further the shop is in dilapidated condition.

The law on the subject of the personal requirement has been sufficiently explained by the Apex Court as well as by the various High Courts from time to time.

Relevant Case Law on Bona fide need:

In the case of Bega Begum 1979 A.I.R. SC page 272 the Apex Court has observed in case of eviction in every case the tenant has to suffer hardship and that cannot be a ground for refusing the release application. The observation of the Apex Court are quoted below:

> Paragraph 12- "Moreover, section 11(1) (h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to made even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended to its language so unduly stretched or strained so as to made it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need."
>
> Paragraph – 19 " In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when section 11(1)(H) of the act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs a decree for eviction.
>
> Paragraph 26 " Thus, on a careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweight the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately to weighed the eviction from that point of view."

Paragraph 28. " For the reason given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejectment of the defendants from the house in dispute is hereby passed against the defendants. In the peculiar circumstances of this case, there will be no order as to costs."

Following the decision of Bega Begum, in the case of N.S.Dutta Vs. VIIth Additional District Judge, Allahabad, 1984 ARC (1) page 113, it has been held as below:

" The expression "*bona fide* required" appearing in the context of Section 21 (1) (a) has received judicial interpretation in various pronouncements. The assessment has to be objective depending upon the facts and circumstances of the case. The word "required" it was pointed out in Mattu Lal Vs. Radhey Lal A.I.R. 1974 SC 1596, signifies that mere desire on the part of the landlord is not enough, but there should be an element of need and the landlord must show that he genuinely required non-residential accommodation for purposes of starting or continuing his own business(See also Ajit Prasad Vs. IVth Addl. District Judge, Meerut, 1979 ARC 73). The need of the landlord does not, however,, have to be shown as absolute. In Smt. Gindori Devi Vs. IInd Addl. District Judge and others, 1979 (UP) RCC 599, at page 601, it was held:-

> " It would suffice to mention that a person is said to need a premise *bona fide* if he requires it honestly. Similarly, the word "required" has also been interpreted in several cases, and the connotation of the said word shows that the landlord must need the premises. In order to succeed in such an application, it is not necessary that the landlord must be on the streets. The connotation of the word "need" or "requirement" should not be unnecessarily or artificially extended so as to give it a meaning that a landlord cannot get a premises released unless his requirement is absolute. No doubt, the question of need of a landlord is to be decided objectively and its decision should not be based on the *ipse dixit* of the landlord, but that does not mean that he must stand on extreme need before he could succeed."

In Jayant Kumar Vs. Prescribed Authority and others, 1979 (UP) RCC 132 it was reiterated that:-

' It is, however, not necessary that the landlord must stand in absolute need of the property. The requirement of law is that the need of a landlord must be honest and in good faith. It is not

correct that a landlord cannot succeed unless he is found in an extreme need."…….

" The proviso to section 21(1) as also the Explanation to section 11 (1)(h) of the other Act (quoted above) require as mandatory regrd being had to the advantage or disadvantages on either side in the event of the application being allowed or otherwise. " To put this, in other words, therefore, there is no difference in substance due to the provision in our Act being designated as a 'proviso' instead of an 'explanation'. The provision is in ' pari materia' and that has also been the consistent view of this Court (See : Sanwal Das Banka Vs. IIIrd Additional District Judge, Faziabad 1982(1) ARC 24; Radhey Shyam Vs. Ivth Addl. District Judge, Bulandshahr 1980 ARC 594. In M/s Central Tobacco Co. Vs. Chandra prakash an unreported decision of the Supreme Court of 1969, which has been followed in Bega Begum (supra) and again in Phiroze Bamanji Desai Vs. Chandrakant N.Patel, (1974) 1 SCC 661, it was held that each party must adduce evidence to show that hardship could be caused to him by the granting or refusal of the decree and that the tenant must also adduce evidence to the effect that other reasonable accommodation was not available to him. The view taken in Bega Begum (supra) has been followed in Kewal Singh Vs. Lajwanti, (1980) 1 SCC 290. The Court is entitled also to take into account the fact that the tenant has neither alleged, nor proved to have made effort to have an alternative accommodation. Nur Ilahi Vs. IIIrd Addl. District Judge, Saharanpur and others, 1983 (1) ARC 412; Sanwal Das Banka, 1982 (1) ARC 24 (supra). Moreover, the non-availability of alternative accommodation to the tenant is in itself not the adequate ground to reject the landlord's application vide Kamal Khan Vs. IIIrd Addl. District Judge, Bareilly and others, 1982 (1) ARC 783. In Suraj Prasad Sharma Vs. IInd Additional District Judge, Mirzapur and others (1983) Addl. CJ. 432; 1983 (1) ARC 427, brother M.N.Shukla, J observed:-

" It is common place fact that invariably when an application under section 21 of the Act is allowed, the tenant has to quit and this involves discomfort but it this alone were sufficient to non-suit the landlord, no application for release could ever be allowed. Judging comparative hardship' is a matter of deeper import and it would be a lopsided other which dismisses a landlord's application for release merely with the plaintiffs dinous observation that the tenant would be 'thrown on the street" The physical dispossession of the tenant is the necessary concommitment of every release application of the landlord which is allowed. However, well founded the application may be an element of inconvenience or discomfort is inherent in the very process of vacating an accommodation. A release application cannot be thrown out merely with the bald observation that the tenant would suffer greater hardship."

In Radhey Shyam Vs. IVth Additional District Judge, Bulandshahr and others, 1980 ARC 594 (supra) the appellate court held that the landlord should himself take one of the shops pointed out by him on rent as the landlord's son had to start a business so that he could make the beginning anywhere without any prejudice, the tenants had a goodwill in respect of the shop in dispute having been carrying on business therein for nearly forty years. Learned Singh Judge considered as weighing the scales for too much against a landlords and it was observed that " if the view taken by the District Judge is accepted, the landlord intending to start a business can never expect to get his shop. For his claim could always be defeated by a sitting tenant on the short ground that the landlord has to make a start while the tenant has already bee in the business for a longer time."

In Tej Kumar Vs. Additional District and Sessions Judge, Hardwar and others - 1994 ARC 117, following the aforesaid two decisions (Bega Begum and others Vs. A.A.Khan and others (1979 (1) SCC 275) and N.S.Dutta Vs. VIIth Additional District Judge, Allahabad 1984 ARC (1) page 113), it has been held as under:

" The inaction of the tenant to search for an alternative accommodation, as already indicated hereinbefore, constitute an additional factor which may outweight the hardship, if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the bona fide requirement for the release stands conclusively established."

In Tej Kumar Vs. Addl. District Judge, Hardwar (supra) following observations have also been made:

"There could be no manner of doubt that the release contemplated under section 21 (1)(a) of the Act can be granted for setting in a new venture of the unengaged member of a family. There is nothing in the Act or policy underlying it, which may lead to any inference contrary to it. In the present case, the *bonafide* need of the disputed shop was the need to settle Pradeep Kumar in an independent business. The need to set up a son in an independent business has always been recognized as *bonafide* and genuine. Even if some members of the family are engaged in the business that cannot be an impediment for the grant of release of the accommodation for enabling the unemployed or unengaged member of the family to start business of his own or for augmenting income as each adult member of the family is entitled to work for his own independent existence and is further entitled to chose a vocation suiting his individual aptitude, education and qualification. Further there could be no manner of doubt that such release can also be granted to provide a source to augment the

income of a family member so trhat he may lead a descent life and cater to the need of his growing family."……..

This Court in its decision in the case of N.S.Datta and others Vs. VIIth Additional District Judge, Allahabad and others, reported in 1984 (1) ARC 113, had observed that the proviso in question requires a mandatory regard being had to the advantages or disadvantages either in the event of the application for release being allowed or otherwise but each party was required to adduce evidence to show that hardship could be caused to him by grant or refusal of the release of the building under tenancy and that the tenant must also adduce evidence to the effect that other reasonable accommodationwas not available to him. It was further observed that the Court is entitled also to take into account the fact that the tenant has neither alleged nor proved to have made effort to have an alternative accommodation and that non-availability of alternative accommodation to the tenant is not in itself an adequate ground to reject the landlord's application for release. In its decision in the case of Dr. Munni Lal Vs. IVth Additional District Judge, Etah and others reported in 1984(1)A.R.C. 378, this Court has clarified that the fact that nothing is brought on record indicating that the tenant had made any effort during the period of the pendency of the release application for getting some accommodation allotted in his favour or otherwise or that he had failed in his attempt is a relevant circumstances while considering the question relating to comparative hardship. Taking into consideration the scheme of the Act, I am of the firm opinion that such an inaction on the part of the tenant constitutes an additional circumstance which entitles the landlord to have a preference shown to him while striking the just balance between the genuine need of the landlord on the one hand and the likely inconvenience or trouble of the tenant on the other. It may further be borne in mind that the use of the phrase "having regard to" as envisaged under the fourth proviso to section 21 of the Act would clearly show that his provision was not obligation. The factors mentioned in Rule 16 of the Rules, should, however, have to be kept in mind while deciding the release application. No single factor can be held to be conclusive. As observed in its decision in the case of Mohd. Muslim Vs. District Judge Varanasi and others, reported in 1978 ARC 328, it is the cumulative effect of all that has to be seen. The inaction of the tenant to search for an alternative accommodatin, as already indicated hereinbefore, constitutes an additional factor which may outweight the hardship, if any, likely to be suffered by the tenant in the event of the grant of the release application in case where the *bona fide* requirement of the release stands conclusively established.

Considering the facts and circumstances of this case, the findings recorded by the Appellate Authority on the question relating to the *bona fide* need and relative hardship which findings are based on appraisal of evidence and the materials on the record do not appear to suffer from any such legal infirmity which may

justify interference therein while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India. Moreover, no justifiable ground has been made out for the intervention of the equity in the ultimate conclusion on the above aspects as reached by the Appellate Authority."

In G.C. Kapoor Vs. Nand Kumar Bhasin and others reported in 2001 Supreme Court and Full Bench Rent Cases 541, the apex Court held as under:

" Clause (a) of sub-section (1) of Section 21 of the Act *inter alia* provides that the Prescribed Authority may, on an application of the landlord; order eviction of a tenant from the building under tenancy on the grounds mentioned in the said sub-section. Clause (a) is relevant for our purpose which *inter alia* provides that an application for eviction can be filed by the landlord if the building is bona fide required by the landlord for occupation by himself or by any member of the family or by any person for whose benefit the premises is held by him, either for residential purposes or for purposes of any profession, trade or calling. Section 41 of the Act empowers the State Government to make rules to carry out the purposes of the Act. Exercising powers under the said provision, Government have framed a set of rules viz. The Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction)Rules 1972. Rule 16 is the relevant rule for release of a premises on the ground of personal requirement. Sub Rule (2) lays down that while considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of building let out for the purposes of any-business, the prescribed Authority shall also have due regard to the facts stated in the clauses in the sub-rule. We are concerned with clause (d) which runs as follows:-

"(d) where a son or unmarried or widowed or divorced or judicially separated daughter of a male lineal descendant of the landlord has, after the building was originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration."

9. It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattarya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the *bona fide* need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not *bona fide*'. It was also held that while

deciding this question, Court would look into the board aspects and it the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt.

10. In Raghunath G.Panhale (D) by Lrs. Vs. Chaganlal Sundarji and Co. 1999 (8) SCC 1: 1999 SCFBRC 440, this Court inter alia held that it was not necessary for the landlord to prove that he had money to invest in the new business contemplated nor that he had experience of it. It was a case for eviction on the ground of bona fide requirement of the landlord for non-residential purposes, as he wanted to start a grocery business in the suit premises to improve his livelihood."

In the case of Gaya Prasad Vs. Pradeep Srivastave reported in 2001 SCFBRC 128 the Apex Court observed as under:

" 2. This case present a sample scenario of the tormenting plight of an average litigant, who approaches the Court with all expectation of getting relief for his urgent need. But the snail paced litigation creeping through all the tiers of the judicial hierarchical forums would have frustrated all his expectations, though others could admire the tenacity with which her persisted with the cause. Twenty-three years ago, the litigant in this case wanted accommodation for his son, who then became a medical graduate, to start a clinic so that from the stage of a fledging in the profession of medicine he could fly higher up. His father who owns the building moved for eviction of the tenant from the building for the said purpose. Although he won the battle at all tiers the urgently needed eviction is till now eluding him as a mirage. ……..

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long hears from the start to the ultimate termini, is a malady afflicting the system. During this long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant despite the impairment already caused. ……..

18. We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Court to evolve some concrete scheme for winching to the fore similar ling pending matter, lying in torpidity at the bottom of the crammed list of pending cases in the High Courts after passing the initial orders, keeping the operative part of the decree of abeyance. It is worth considering whether a cell can be set up in each of such High Court where the piles of backlog are a stirring problem, to pick out such cases to be brought to the notice of the Chief Justice of the

High Court concerned so that he could take appropriate steps in the matter."

In the case of Sardar Pritam Singh Vs. Sardar Prakash Singh reported in A.R.C. 1999 (2) page 338, Bench of Allahabad High Court observed as under:

" 18. Learned counsel for the petitioner then referred to the decision reported in 1996 (1) AWC 409. View taken in the decision reported in 1990 AWC 1508 has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he would live and the need of the landlord must be commensurate with his status-keeping in mind his need both qualitatively and quantitatively."

"20. In case reported in 1999 (1) ARC 188, it has been observed in paragraphs 9, 10, 14, 18, and 19 that there should be no interference if exercise of power is legal and no reasonable man will arrive at a different conclusion. In these decisions referred to above, this Court took the view that 'finding of fact' recorded after appraisal of evidence are not amenable and cannot be assailed. In the case reported in 1997 (2) ARC 498, learned Singh Judge in paragraph 7 and 10 of the judgment observed that effect of subsequent event have to be taken into account and find out whether children had grown up and need of the landlord has become more pressing. The said observations are against stand taken on behalf of the respondent no.1."

"21. The two courts below recorded findings of fact completely ignoring imminent need of the landlord's family as if his family's need was statics. No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodations. Further boy and girl, be brother and sister, could be forced to share one room and separate accommodation for their studies was required. The two Courts below erred in not appreciating the evidence on record in correct perspective. The findings recorded by the two Courts below are no findings of fact in the eye of law as they have been recorded by ignoring admitted facts, material and relevant circumstances, namely, family of the landlord was bound to increase. Findings recorded in ignorance of plea of the landlord on this score vitiated in law and cannot be sustained and liable to be quashed in writ jurisdiction. In support reference may be made to the case reported in (1994) 4 SCC 1."

Counsel for the petitioner has also raised the plea that the affidavits filed before the Prescribed Authority were not in accordance with the rules and as such the same cannot be entertained. Suffice it to state that no such objection was taken by the petitioner before the Prescribed Authority or the appellate authority and therefore, the argument cannot be allowed to be raised for the first time.

The Prescribed Authority has, therefore, rightly concluded that the landlord has got four sons and all have to be accommodated. It is the duty of the father to get all the sons engaged as held in the case of Deep Chand Nem Chand Jain and others Vs. The Prescribed Authority, A.D.M.(E), Saharanpur and others. The same is incorporated as under:

"I am not persuaded to accept the contention of Sri. S.N.Kackker as a proposition, the if some members of the family of the landlords are found engaged in any business earning profits the building under tenancy ought not to be released for enabling the unemployed or unengaged members of the family to start business of their own in tht building merely because the family as a circle or until has some existing business engagement. In my view, each adult ought to be legitimately entitled to work for his own independent existence and sustenance. He is entitled to choose a vocation or profession suiting his individual aptitude, education or qualification, capabilities and so forth. The need of such an unemployed member cannot, in my judgment, be telling him that he must follow the line or profession of the other members of the family or try to get absorbed in the business already carried on by the family. Ofcourse, such a need of the landlord will have to balanced against the hardship likely to be caused to the tenants from the grant of application.

To my mind, the fact that under section 21(1) of the Act, the release can be had for the benefit of the landlord's family members also is not adequate ground for holding that the release of the building cannot be asked for setting in a new venture of the unengaged member of the family. I find nothing in the Act or the policy underlying it which may countenance the broad proposition canvassed by Sri S.N.Kackker."

Similarly in the case of Smt. Ramkubai since deceased by L.Rs. and others Vs. Hajarimal Dhokalchand Chandak and others reported in AIR 1999 SC 3089 the Apex Court has held that the son who was unemployed at the time of filing of the suit and subsequently started the

work of construction contractor, can not be expected to remain unemployed till suit is finally decided. His taking up contractor's business in the meanwhile, does not militate against his intention to start family business. The observation of the Apex Court are quoted below:

> " Therefore, we do not think that taking up contractor work, in the meanwhile will militate against his carry on business of Kirana which is his family business, which was carried on by his father and is being carried on by his brother independently. The facts that the landlady during her lifetime was a partner in the firm carrying on Kirana business and her elder son is carrying on Kirana business do not disentitle Bhikchand to establish his own business.. We are not impressed by the other reasoning and conclusion of the Appellate Court which are confirmed by the High Court. In our view, none of the reasons leads to the inference that Bhikchand cannot be denied to the landlady to recovery to recover the suit premises for personal requirement of Bhikchand to establish Kirana Business independently.
>
> The only other aspect which is required to be noticed is requirement of sub section (2) of section 13 of the Act. It enjoins the Court not to pass decree for eviction under clause (g) of sub section (1) if, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, it is satisfied that greater hardship would be caused by passing the decree than by refusing to pass it and if the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court has to pass the decree in respect of such part only……...
>
> We are satisfied that the present appellants have established bona fide requirement to recover the possession of the suit premise from the respondents."

In the case of Dwarkaprasad Vs. Niranjan reported in 2003 SCFBRC 351 the Apex Court has held as under:

> " A latest decision of this court in Joginder Pal Vs. Naval Kishore Behal reported in 2002(5) SCC 397: 2002 SCFBRC 388, to which one of us (R.C.Lahoti,J.) was a party takes the same view. In fact, this judgment contains a detailed resume of the entire case law on this point and holds that the expression for "his own use" occurring in Section 13(3) (a)(ii) (a) of the East Punjab Urban Rent Restriction Act, 1949 has to be liberally construed and should be given a wide and useful meaning rather than a strict and narrow construction. The requirement of a member of family of the landlord who is dependent on the landlord for purposes of

residence or for economic consideration can be considered as a requirement of the landlord."

Counsel for the petitioner has referred to the following decisions on the jurisdiction, *bona fide* requirement and comparative hardship of the landlord that it is only a desire and the requirement is not a *bona fide*:

1. (2001) 8 SCC 97 – Estralla Rubbger Vs. Dass Estatate (P) Ltd.
2. (2003) 4 SCC 161 – Bondar Singh and others Vs. Nihal Singh and others
3. AIR 1985 SC 207- M/s Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina.
4. 1986 A.W.C. 317 - Babu Lal Vs. Smt. Tula Bai and others.
5. 1984 A.W.C. (Supp.)354- Mohd. Yaqub Vs. IVth A.D.J, Kanpur and others
6. 2003 (1) E.L.C. 218- Tilak Raj Bajaj Vs. Shamshad Ahmad and others
7. 1990 (2) A.R.C.- 140 Shiv Nath Srivastav Vs. Kali Charan through L.Rs and others.
8. 2001 (1) A.R.C. 302 Inayat Elahi Vs. VIIIth Addl. D.J.,Kanpur Nagar and others.
9. U.P.Rent Control Cases 1978 (U.P.) Supp. R.C.C. Sita Ram Vs. 6th Addl. District Judge
10. A.W.D. 1996 (2)181 Nathu Mall Vs. Kailash Chandra and ors.
11. A.R.C. 1995 (2) 595 Babu Ram alias Babu Lal Vs. Addl. D.J. (Special Judge), Rampur and others.
12. 2001 AWC 1783 Abdul Hai Vs. IIIrd Addl. D.J., Basti and others.
13. 1997 (30) ALR 595 Vijay Bahadur Singh Vs. IVth Addl. Distt. Judge,Etawah
14. 1991 (18) ALR 4 Smt. Sakooran Bibi Vs. Ist Addl. Judge, Jaunpur (H.C.).
15. 1983 AWC 890 State of U.P. and another Vs. Ist Addl. District Judge, Allahabad and others.
16. AIR 1970 pg. 652 A.K.K. Nambhiar Vs. Union of India.
17. 1991 AWC 238 R.P.Chandra Vs. Obeetee Pvt. Ltd.
18. 1990 (1) A.R.C. 148 Smt. Dyman Prabha Dogra Vs. S. Kusum Lata Srivastava.
19. 1981 (U.P.)1 RCC the U.P.Rent Control cases 199. Smt. Kamla Ajuja Vs. 6th A.D.J. Meerut
20. AIR 2996 SC 113 Anubakar Abdul Inamdar Vs. Harun Abdul Inamdar.
21. (2003) 4 SCC 161 Bondar Singh and others Vs. Nihal Singh and others.

None of the aforesaid decisions apply of the facts of this case in as much as all four sons are unemployed and merely Ramesh Chandra is doing the business from his own house will not convert the residential place into commercial so as to accommodate the tenant from being evicted.

(2001) 8 SCC 97 – Estralla Rubbged Vs. Dass Estatate (P) Ltd. and (2003) 4 SCC 161 – Bondar Singh and others Vs. Nihal Singh and others are very much clear and under Article 226/227 of the Constitution of India, High Court cannot reassess the evidence on record. Moreover, no evidence has been left by the authority below.

Dilapidated Condition:

It has come on the record that the building is in dilapidated condition. It has also been proved from the inspection report.

Section 21(1) of the Act provides as under:

> **"Proceedings for release of building under occupation of tenant.-** (1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely –
>
> (a) that the building is *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of the public charitable trust, for object of the trust;
> (b) that where the building is in a dilapidated condition and is required for purposes of demolition and new construction:
>
> Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no
> Application shall be entertained on the grounds mentioned in clause (a), unless a period of three years has elapsed since the date of such acquisition and the landlord has given

a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years:

Provided further that if any application under clause (a) is made in respect of any building let out exclusively for non-residential purposes, the prescribed authority while making the order of eviction shall after considering all relevant facts of the case, award against the landlord to the tenant an amount not exceeding two years rent as compensation and may, subject to rules, impose such other conditions as he thinks fit:

Provided also that no application under clause (a) shall be entertained-

(i) for the purposes of a charitable trust, the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste or place of birth;

(ii) in the case of any residential building, for occupation for business purposes;

(iii) in the case of any residential building, against any tenant who is member of armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925) has issued certificate that he is serving under special condition within the meaning of section 3 of the Act, or where he has died by enemy action while so serving then against his heirs:

Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of application as against the likely hardship to the landlord from the refusal of the application and for the purpose shall have regard to such factors as may be prescribed."

The landlord, therefore, is not required to establish the ingredients of Rules 17 of the act No. 13 of 1972. Section 21 (1)(b) it self provides for the release of the shop if it is in dilapidated condition.

In Gur Prasad Vs. First A.D.J. Kanpur, Allahabad Rent Cases, 1997 (1) 462, it has been held that if the landlord requires the premises for making constructions as well, he may not prove the ingredients contained under Rule 17 of the Act. The observations are quoted below:

" In Phuland Singh and others Vs. Ganedra Kumar Roy Chaudhary, A.I.R. 1950 Cal. 74, a Division Bench of Calcutta High Court while considering the proviso (f) to section 11 of West Bengal Premises Rent Control (Temporary Provisions) Act, 1948,

which provided that where the premises are bona fide required by the landlord either for purposes of building or rebuilding, or for his own occupation of for the occupation of any person for whose benefit the premises are held it may be released in favour of the landlord, has laid down as under:

> " It is suggested that this provision giving the landlord a right to possession, if he established that the required the premises bona fide for rebuilding, could have no application whatsoever unless the state of the premises was such that they required to be rebuilt. It is to be observed that proviso (f) to section 11(1) of the Act does not mentioned premises requiring rebuilding. What it states is tht sub-section (1) shall have no application if the landlord requires the premises bona fide for rebuilding. The state of the premises, therefore, is not an essential factor in the case."

> "Following the aforementioned decision of Calcutta High Court as well as other cases a learned Single Judge of this Court in Smt. Champa Kunwar Trust Vs. District Judge, AIR 1976 Alld. 252, has held that the state or the condition of the building is not material for the purpose of application of Section 21(1)(a). Another learned Single Judge in Madan Gopal Vs. IIIrd Additional District Judge, 1982 (1) A.R.C. 226, has also held that a very old dilapidated premises can be released under section 21(1)(a) without complying with regard to the provisions of section 21(1)(b) or Rule 17. Relevant extract from the said decision of learned Single Judge is reproduced below:

> "Then question arises for consideration whether the premises could have been released for making new constructions and that too after demolition of the premises in dispute, in absence of non-compliance of Rule 17 of the Rules framed under the 'Act'. It is not in dispute that the plan has already been submitted and the finding has been recorded by the Appellate Court that the shop is in dilapidated condition. The Appellate Court relied upon evidence including affidavits and other material on record in arriving at this finding. It believed the affidavits filed on behalf of the landlord. Though the shop may not be in such a dilapidated condition which required immediate attention, but it is an old shop and from its structure it can be said to be dilapidated. The word 'dilapidated' is a relative term and the meaning given to cannot be static. Under section 21(1)(a) of the Act a premises can be released in the existing form even for the purposes of new constructions and in the instant case the need of the landlord has been held to be bona fide and genuine and the premises have

been released under section 21(1) of the act and the need of the landlord having been found to be genuine under Section 21(1)(a) of the Act, as such, there was no question of applicability of Section 21(1)(b) of the 'Act' as also Rule 17 of the Rules framed under Act. This ground has got no force."

In Smt. Champa Kunwar Trust Vs. District Judge reported in A.I.R. 1976 Alld. 252 it has been held as under:

" A case of a dilapidated building may call for an immediate demolition without there being any further provision for bona fide requirement by the landlord. But, clause (a) of section 21 (1) does not deal with the case of dilapidated condition of a building. The conditions required for fulfillment in order to obtain the eviction of a tenant under this clause is that the building is bona fide required after demolition and new construction by the landlord for his occupation. The expression of this provision is, therefore, wide enough to cover cases where a landlord bona fide requires a building for demolition in order to fulfil its objects. In my view, therefore, the proper interpretation which is required to be put to this provision is to find out whether the landlord immediately requires the building for demolition in order to fulfil his requirements and if he establishes the same, he becomes entitled, of course, subject to fulfillment of other conditions, to get an order of eviction of the premises under clause (a) of Section 21(1) of the Act. As stated above, the bad condition of the building is not necessary to be taken into account for the purposes mentioned above.

I, however, should not be understood to mean that if a landlord does not bona fide intend to immediately demolish the building, he can invoke the aforesaid provision merely with view to evict the tenant. The Court would be justified to look into the scheme, the plan and the resources of the landlord to find out as to whether the intention of the landlord is bona fide or not and if after considering these facts it comes to the conclusion that the landlord bona fide requires the building it will not be justified to reject the application simply on the ground that the building is not in a dilapidated condition and, therefore, the need of the landlord cannot be said to be genuine."

In Jagat Pal Dhawan Vs. Kahan Singh (dead) reported in 2003 SCFBRC 116, it has been held by the Apex Court as below:

" So is the view taken in R.V.E. Venkatachala Gounder Vs. Venkatesha Gupta and others, 2002 SCFBRC 280: (2002)4 SCC 437 and

in Harrington House School Vs. S.M. Ispahani and another, 2002 SCFBRC 32 (SC): (2002) 5 SCC 229. The fact that demolition and reconstruction would result in modernizatioin, making additional space available and / or would augment the earning of the landlord are relevant factors for determining the bona fide of the requirement for demolition and reconstruction."

Comparative Hardship:

Proviso to section 21 (1)(a) of Act No. XIII of 12972 provides as under:

> " Provided also that the prescribed authority, shall, except in cases provided for in Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose have regard to such factors as may be prescribed."

So far as the cases of comparative hardship is concerned, in view of the judgment of the Apex Court in Sushila Vs. IInd A.D.J.Banda reported in 2003 SCFBRC 109 even after considering the Rule 16, need of the landlord has been found to be bona fide and greater hardship lies in his favour rather than petitioner. The observations of the Apex Court are quoted as under:

> "As observed earlier it is clear that the length of period of tenancy as provided under clause (a) of sub-rule 2 of Rule 16 of Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need it certainly bonafide and has also been so accepted by the respondent before us."

As will appear for the proviso to section 21(1)(a) of the Act that the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the

application alone has to be looked into after taking into consideration the factors.

Rule 16 (2) is quoted reads as under:

"(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of building let out for purposes of any business the prescribed authority shall also have regard to such facts as the following:

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less justification for allowing the application;"

(b) where the tenant has available with him, suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of the landlord own part from the business proposed to be set up in the lease premises, the less the justification for allowing the application, the even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available within him other accommodation(whether subject to Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribe authority;

(d) where a son or unmarried or widowed or divorced or judicially separated daughter or daughter or ma male lineal descendant of the landlord has, after the building is originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration."

In the case of Arvind Kumar Vs. IInd A.D.J., Etawah reported in Allahabad Rent Cases, 1997 (1) page 304 Rule 16(2)(a) has been interpreted and it has been held as under:

> "It admits of not doubt that according to clause (a), sub-rule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building, less the justification for allowing the application but at the same time, having regard to over-all facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bonafide requirements of the landlord cannot be assailed and whittled down merely because the petitioner had been carrying on his business in the shop in questions since the year 1977. It is explicitly postulated in clause (b), sub-rule (2) of Rule 16 that where the tenant has available with hm suitable accommodation to which he can shift his business without the peril of substial loss thre shall be greater justification for allowing the application. The expression "available with him" in this sub-rule does not necessarily mean actual physical availability. a suitable alternative accommodtioin which may become available on an effort being made in that direction is also in the comprehension of the expression and in the acts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternatifge accommodatio, notwithstanding the fact that the litigation between the patties has protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82: 1994 (2) ARC 11, it has been held by Sudhir Narain J. and I concur with the view taken therein……"

The learned counsel for the petitioner has prayed about the Good-will of the tenant. It has been held in Tej Kumar Vs. Addl. District and Sessions Judge, Hardwar reported in Alld. Rent Cases 1994 (2) page 117 as under:

> "It has been next contended by the learned counsel for the petitiner that the impugned order passed by the Appellate Authority stands vitiated in law as the implicatins arising under the loss of 'good will' in the event of grantfor release sought for have not been considered by the Appellate Authority in a correct perspective. In this connection, it may be noted that the provisions contained in the Act and the Rules framed thereunder do not attach any significance to a 'good will'. Rule 16(2)(a) of the Rules does not refer to any good will but nonetheless emphasizes on the length of the period of business being done in the building indicating that the larger the duration of business the less justification for allowing the application for release. It seems

to me that the omission to use the term 'good will' appears to be deliberate. It may be usefully noticed that the assets of a business include not only the stock-in-trade and book debt, furtnitures, bills machinery etc. but also an intangible and a very valuable property called 'good will'. The word 'good will' is very difficult to define and foften it can be safely stated that it is nothing more than the probability of the old customers resorting to old place. It sometimes means more than this as often the good will exists quite independently of locality. An assignment of the good will necessarily includes exclusive right to use the name or style in which the business is run. As a matter of fact the 'good will' of a particular business as pointed out by this Court in the case of Mahabir Prasad Vs. Vith Additional District Judge and others, reported in 1993(2) ARC 41, is infact based on personal dealing, attitude, behaviour and conduct of the shop keeper with his customers. Good will in such type of business is not attached to a particular premises but is attached to the person who is carrying on the business. If the shop keeper has good and fair dealings with the customers he would, therefore, carryuing is good will with him even if the business is shifted from one place to another. This Court in the aforesaid decision had pointed out that the mere fact that the tenant is carrying on business in shop since long could not be a ground to hold that in case his business is shifted to another shop he will lose his 'good will'. This Court further observed that looking to the bonafide requirement of the landlord and also to the comparative hardship of the parties, the factor of the goodwill would be of little consequences."

In view of the above proposition of law goodwill alone canot nullify the requirement of the landlord.

Rule 16(2)(b) of Act No. XIII of 1972 with regard to availability of the accommodation to the tenant has been interpreted in the case of Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (I) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observation in the decision of Munni Lal Gupta (supra) are quoted below:

" A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82 : 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed material before the authorities to come to their conclusions that he made such an effort." The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application.

Relying upon the judgment of Apex Court Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, it has been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others - Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

" As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and othrs reported in 1984 (1) A.R.C. 387, the *bona fide* need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"…….

In the case of Bega Begum and Abdul Ahmad Khan, reported in AIR 1979 SC 272:1986 SCFBRC 346, the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into

account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilised for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term of the term 'requirement should not be artificially extended not its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be titled in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

In the case of Sardar Pritam Singh through LRs Vs. Sardar Prakash Singh and others in 1999 (2) A.R.C. P-338, it has been observed as below:-

> Paragraph 18- "Learned counsel for the petitioner then referred to the decision reported in, 1996 (1) AWC 409. View taken in the decision reported in, 1990 AWC 1508 has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he should live and the need of the landlord must be commensurate with his statuskeepng in mind his ned both qualitatively and quantitatively."
>
> Paragraph 21- " No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodation."
>
> Paragraph 23- "Writ petition allowed. Petitioners may approach the Prescribed Authority (respondent no.2) to deliver the possession as contemplated under the Act. There will be no order as to costs."

Further, the appeal having been made by the landlord, it will be open for the petitioner to avail the same.

The above view is also taken in the case of Bharat Kumar Gupta Vs. VIIth Addl. District and Sessions Judge, Aligarh, reported in A.R.C. 1997(2) page 259.

In Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada 2003 SCFBRC 166 the Apex Court observed as under :

> "In piper Vs. Harvey, 1958 (1) All. E.R. 454, the issue as to comparative hardship arose for the consideration of Court of Appeals under the Rent Act, 1957. Lord Denning opined: "When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden on him to prove) the case is of greater hardship."

> Hudson, L.J., opined: "The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or indeed, to raised the question of his relative financial incompetent as compared wih the landlord." On such state of the case, the Court answsered the issue as to comparative hardship against the tenant and ordered his eviction."

Conclusion

The Appellate Court after taking the evidence on record as well as preparing the inspection note of the premises, has recorded a finding that his all the four sons are unemployed and the shop is required for Sachhidanand alias Rajendra. The landlord will get the premises demolished and according to his requirement the same will be reconstructed. There is a report of the Patwari paper no. 12-C. Reliance has been placed on the said report of the Appellate Court to the effect that on the back of the shop the family of the landlord is residing besides the shop. The inspection also shows that the landlord has constructed his kitchen and the wood of the same has already lived its life and by taking shelter, walls are not standing. The whole of the property is in a dilapidated and ruinous condition. Even shop of the petitioner has a tin-shed, which is also in a dilapidated condition and by card-boared the same is standing. A perusal of the order passed by the District Judge shows that the entire property is liable to be demolished and to be reconstructed and the landlord will get his sons settled according to their requirement. Looking to the report and the evidence on record, it is just surprising that due to rigor of the Rent Control Legislation, the landlord is not able to get the property even reconstructed and settled his sons. Proceedings were initiated in the year 2001 and three years have already passed and a judicial notice can be taken of fact that the property could fall at any moment as will appear from the observations of the Appellate Court that the property can fall at any moment. A clear cut finding is

recorded that " MAKAN DHAHNE SE JAN MAL KA KHATRA HO SAKTA HAI."

Further a report of the Executive Officer, Nagar Palika, Rudraprayag paper no. 22-C also shows that the shops and godowns as well as the house of the landlord are in ruinous condition.

In view of the aforesaid facts and circumstances, no other conclusion is possible except that the landlord requires the premises bona fide, and the comparative hardship lies in favour of the landlord. It is a case where not only the requirement of the landlord has been established for requirement of his sons, but also to settle them in a dignified manner after getting the premises constructined in accordance with their requirements. The tenant has not been able to search out the accommodation and has occupied the premises, which is only in ruinous and decaying condition. Thus the comparative hardship and bonafide need both lies in favour of the landlord and he can be compensated under proviso of section 21(1)(a) for two years rent. Following the view of the law laid down by the Supreme Court in the case of Bhagwan Das Vs. Smt. Jiley Kaur and others reported in SCFBRC 1991 page 182, the tenant was required to establish that he has made efforts, the observations are quoted below:

> "Thirdly, it was a case where even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. In Mst. Bega Begum Vs. Abdul Ahad Khan, (1979)1SCC 273; 1986 SCFBRC 246 may be caused to one party or the other, in case of decree for eviction in passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages willl be suffered by the defendants and that they were remediable."

From the evidence on record, it is substantiated that the four sons are out of employment and as such the petitioner should have searched the accommodation. No evidence has been led by the petitioner that he

has made any effort to search the accommodation to during the pendency of the case.

Interference under Article 226/227 of Constitution of India:

The jurisdiction under article 226/227 of the Constitution of India is limited and High Court cannot act like a Court of appeal so as to interfere with the findings of the Prescribed Authority on the question of *bona fide* hardship.

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

> " In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- " considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

In the case of K.M.Abdul Razzak Vs. Damodharan (supra) the Apex Court held that the revisional Court should not transgress the jurisdiction conferred upon it and held as under:

> "Instead of remanding the matter of the Appellate Authority, the High Court has taken up the exercise to record findings on the aforesaid illustrative elements after re-appreciating

the evidence which we think was not permissible under Section 25 of the Act. It is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as an Appellate Court 6to reappraise or reassess the evidence afresh as an Appellate Court and come to a different finding contrary to the finding recorded by the Court below. We, therefore, hold that the High Court while allowing the revision transgressed its jurisdiction conferred upon it under section 25 of the Act."

Relying upon the case of Kamla Sarin Vs. Shyam Lal and others-1984 (2) Alld. R.C. 344, Munni Lal and another Vs. Prescribed Authority and another-AIR 1978 SC 29: 1981 ARC 470 (SC), Natthu Lal Vs. Radhey- AIR 1974 SC 1696, Bvabhutmal Raichand Vs. Laxmibai- AIR 1975 SC 1296, Smt. Labhkumar Bhagwani Shaha Vs. Janardan Mahadeo Kalan-AIR 1983 SC 535, Ram Rakesh Pal and another Vs. Ist Additional District Judge and others – 1976 UPRCC 376, Jagan Prasad Vs. District Judge and another - 1976 UPRCC 342, Laxmi Narain Vs. IInd Additional District Judge and another - 1977 UPRCC 230, Smt. Nirmal Tandon Vs. Xth Additional District Judge, Kanpur Nagar – 1996 (2) AIR 409 and Kamleshwar Prasad V.s Praduman Ju Agarwal, 1997 (1) ARC 627, A Bench of the Allahabad High Curt in the case of Kashmiri Lal Vs. Rajiv Kumar Gupta has held as under:

" In view of the above decisions, I feel that it is not a fit case requiring intefference under Article 226 of the Constitution of India. The concurrent findings recorded by the Courts below do not suffer from any infirmity. The writ petiton is accordingly dismissed."

In the case of Atma S. Berar vs. Mukhtiar Singh reported in 2003 SCFBRC 174 the Apex Court has held as under:

"The object of conferring revisonal jurisdiction on the High Court by sub-section (5) of section 15 of the Act, is to enable it satisfying itself as to the legality or propriety of an order made by the controller or the proceedings before him. In Ram Das Vs. Ishwar Chander and other (supra), it has been held that the nature and scope of revisional jurisdiction conferred on the High Court shall have to be determined on the language of the statute investing the jurisdiction. In Prative Devi Vs. T.V.Krishnan, JT 1987 (1) SC 764:1987 SCFBRC 242 (2), a three judge bench held

Mahesh Chand Gupta (supra) this Court made a comparative study of the provisions contained in Section 115 C.P.C. in juxtapositon with Section 25-B (8) of Delhi Act and held that the High Court cannot appreciate or re-appreciate evidence dictated by its mere inclination to take a different view of the facts as if it were a Court of facts. A conclusion arrived at which is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available, ignoring the weight of evidence, proceedings on a wrong premise of law or deriving such conclusion from the established facts as betrary a lack of reason and/or objectivity would render the finding ' not according to law' calling for an intefference under section 25-B (8) proviso by the High Court – Mudigonda Chandra Mouli Sastry Vs. Bhimanepalli Bikshalu and other, JT 1999 (6) 86 : 1999 SCFBRC 375 and Lekh Raj Vs. Munni Lal and othrs, JT. 2001 (2) SC 317: 2001 SCFBRC 134, take the same view. The scope of revisional jurisdiction under section 15 (5) of the act is similar, that is confined to testing the legality or propriety of order or proceedings of controller."

Consequently, writ petition is dismissed. No order as to costs.

However, time is granted upto 31st of December, 2004 to vacate the premises provided an under taking is given in the following terms by the petitioners:

(i) to vacate the premises by 31st of December 2004

(ii) to pay entire damages for use and occupation upto 31st December, 2004 by 30th October, 2004

(iii) The undertaking shall be furnished by 31st October, 2004.

(iv) In case of default the decree for eviction shall be executed forthwith.

September 27 ,2004

(Rajesh Tandon, J.)